



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pickering Firm Incorporated

File: B-277396

Date: October 9, 1997

Joe B. Emison, Jr., for the protester.

Robert C. Miller, Esq., and C. Grady Moore, Jr., Esq., U.S. Army Corps of Engineers, for the agency.

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DIGEST

1. Where Commerce Business Daily (CBD) announcement stated that agency would consider qualifications and experience of architect-engineer (A-E) firms in nine disciplines and evaluators considered the protester superior in its qualifications and experience in one of them--museum/exhibit design--record fails to show that evaluation and selection decision were inconsistent with CBD announcement where the announcement identified none of the nine disciplines as more important than the others; agency found the awardee's qualifications and experience superior for other disciplines; and source selection board could reasonably conclude that there was no significant difference in the qualifications and experience of the two firms.
2. Where CBD announcement stated that evaluation of specialized experience and technical competence would include knowledge of local and regional codes and regulations, source selection board's conclusion that awardee's proposal presented an advantage in its superior knowledge of local and regional codes and regulations was consistent with the announced factors; protester's objection to the consideration of such a factor constitutes an untimely allegation of a solicitation defect.
3. General Accounting Office will not reevaluate offeror's capabilities or make its own determination of the relative merit of proposals, and where evaluation of management structure appears reasonable and consistent with the announced criteria, the protester's disagreement with the evaluation provides no basis for sustaining a protest.

4. Protest challenging conduct of interviews of A-E firms because not all members of the source selection board attended interviews is denied where agency's regulation does not require all members to be present, there is no evidence that their absence resulted in unfair treatment, and the record otherwise shows that the evaluation was reasonable.

DECISION

Pickering Firm Incorporated protests the proposed award of a contract to Johnson and Bailey Architects, P.C. under request for proposals (RFP) No. DACW62-97-R-0006, issued by the U.S. Army Corps of Engineers, Nashville District, for design services for an environmental education center/children's museum, which the agency contemplates constructing sometime next year. Pickering contends that the agency unreasonably and improperly evaluated proposals; specifically, Pickering argues that the evaluation was performed in such a way as to favor local, Nashville-area firms.

We deny the protest.

On December 6, 1996, the Commerce Business Daily (CBD) published the agency's request for interested firms to submit a statement of their qualifications to be considered for the award of a contract to prepare design documents for construction of an environmental education center/children's museum in Murfreesboro, Tennessee. The project would consist of two phases: phase I, preparation of the site in advance of construction (including environmental remediation, asbestos abatement plans, and demolition plans for two existing municipal buildings); and phase II, preparation of final plans and specifications for construction of the new building, including site development, roads, parking, utility relocation, and wetland/spring interpretation.

The CBD notice advised firms of the need to demonstrate expertise in the disciplines of architecture, environmental, civil, structural, electrical, mechanical, landscape architecture, interior design, and museum/exhibit design. It listed the selection criteria, in descending order of importance, as follows:

- a. Professional qualifications of the key project management and technical personnel to be assigned to the contract. Evaluation factors will include the education, training, experience, and registration of these personnel.
- b. Specialized experience and technical competence of the prime firm and any subcontractors in the type of work required. Evaluation factors will include knowledge of local and regional codes and regulations, the effectiveness of the proposed management structure and the prior working relationship between a prime firm and any

subcontractor. A single point of contact between the [architect-engineer (A-E)] and the Government project manager must be clearly identified.

c. Capacity of the firm to accomplish the work.

d. Past performance and experience on [Department of Defense (DOD)] and other contracts with respect to cost control, quality of work, and compliance with schedules.

e. Geographical proximity of the office responsible for contract negotiations and production of the work in relationship to the Nashville District Office and the city of Murfreesboro, TN.

f. Volume of DOD contracts within the last twelve months with the object of effecting an equitable distribution of contracts among qualified A-E firms including small and small disadvantaged business firms.

Criteria a-d were described as "primary," with criteria e and f to be used only as "tie-breakers" among technically equal firms.

Fifteen firms submitted the required standard forms (SF) 254 (a general questionnaire for A-E and related services) and 255 (relating to the specific services being solicited) by January 3, 1997. The agency established a source selection board (SSB), which evaluated the firms' qualifications. In accordance with Federal Acquisition Regulation (FAR) Subpart 36.6, the agency selected three firms, including the protester and the awardee, as most highly qualified to perform the services. See FAR § 36.602-3(d). The SSB invited the three firms for interviews on February 4; one member of the SSB served as chairman at all of the interviews and the remaining members were represented by subordinates. After the interviews and a review of the firms' qualifications, the agency ranked the three offerors, with Johnson ranked first and Pickering ranked second. By letter dated March 12, the agency advised the protester that it was initiating negotiations with the top-ranked firm. Pickering filed this protest with our Office after initially filing a protest with the agency, which the agency denied by letter dated June 19.

Pickering principally argues that the agency improperly favored local, Nashville-based firms in the evaluation and selection process. Pickering asserts, and the agency does not dispute, that its qualifications and experience were superior to Johnson's in the discipline of museum/exhibit design. It is Pickering's contention that, to favor a local, Nashville-area firm, the agency improperly discounted the protester's superiority in that discipline and unreasonably concluded that there were no significant differences between the firms under the four primary selection criteria. By improperly ignoring Pickering's superiority, the protester

argues, the SSB created an artificial "tie" between the proposals, which allowed the agency to favor a local firm by basing its selection decision on geographical proximity, one of the two tie-breaking evaluation criteria.

In reviewing an agency's selection of a contractor for A-E services, our function is not to make our own determination of the relative merits of the submissions, or to substitute our judgment for that of the procuring agency by conducting an independent examination. Geographic Resource Solutions, B-260402, June 19, 1995, 95-1 CPD ¶ 278 at 5. Rather, our review is limited to examining whether the agency's selection was reasonable and in accordance with the published criteria. ConCeCo Eng'g, Inc., B-250666, Feb. 3, 1993, 93-1 CPD ¶ 98 at 3. The protester must demonstrate that the evaluation was unreasonable, a burden that is not met by mere expressions of disagreement with that evaluation. CH2M Hill, Ltd., et al., Apr. 6, 1995, 95-1 CPD ¶ 203 at 4. The record here provides no basis to conclude that the agency's selection of Johnson was improper or unreasonable.

The SSB here prepared a memorandum, dated February 27, for the selection official summarizing its findings and recommending Johnson for award. That memorandum reflects the SSB's opinion that, despite the excellence of Pickering's museum design subconsultant, there was no meaningful difference between the proposals of Pickering and Johnson under the four primary evaluation criteria. The SSB considered Johnson's knowledge of local and regional codes and regulations superior; it considered Pickering's proposed management structure, which had most of the required disciplines in-house, superior. Under the "tie-breaker" criteria, the SSB noted, Johnson was superior both in geographical proximity and its lower volume of DOD contracts.

Subsequent to Pickering's protest to the agency, members of the SSB prepared additional documentation to elaborate on their reasoning.¹ That documentation

¹As the agency itself recognizes, the contemporaneous evaluation record is sparse, consisting of the February 27 memorandum addressing the relative strengths and weaknesses of the offerors. After the agency-level protest was filed, the SSB prepared individual worksheets and consensus ratings discussing in more detail the specific findings that led to the selection decision. For example, while the contemporaneous memorandum contains no expression of concern over Pickering's management structure, as discussed below, the agency did prefer Johnson's approach, where the firm's principal would be the lead architect as well as the single point of contact, versus Pickering's approach, which provided for a lead architect as well as a project manager/point of contract, apparently answerable to a "project director," whose role was unclear. Since we base our decisions on the

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indicates that, while the SSB recognized the particularly strong qualifications of Pickering's museum design subconsultant, it considered Johnson's qualifications and experience somewhat better for the disciplines of architecture, landscape architecture, and environmental. The SSB members noted that both firms proposed to employ registered professionals in all of the technical disciplines, with the experience of both firms in museum/exhibit design attributable to their subconsultants, rather than to in-house capabilities. Moreover, while recognizing the superiority of Pickering's subconsultant, the SSB members regarded Johnson's subconsultant for museum/exhibit design very highly.

The supplemental documents also support and elaborate on the SSB's conclusion in the February 27 memorandum that museum/exhibit design expertise should not in itself be the basis for selection. There are, the agency explains, two ways to design a museum: to design exhibits and to design the building as a "shell" to house those exhibits, or to design a more general-purpose building to accommodate exhibits that will be designed later. Here, the record shows that funding for the entire project was not assured and that the agency anticipated the latter approach, where Pickering's ability to design a building around the exhibits would be of far less importance than the disciplines needed in the initial, site-preparation phase of the project.

In essence, the agency determined that, given the nature of the project here, Pickering's qualifications and experience with museum/exhibit design were not, by themselves, a basis for selecting Pickering. We see no basis to conclude that this determination was unreasonable. The CBD announcement identified nine disciplines and required a demonstration of competence for all of them. These disciplines were not designated in any order of importance or identified as having any relative standing. There was, therefore, no basis for Pickering's assumption that superiority in museum/exhibit design would be determinative. Further, the CBD announcement clearly indicated that, while design of the museum building was to be part of phase II, other work unrelated to museum design--site preparation and development involving such efforts as environmental remediation, road development, utility relocation, and wetland/spring interpretation--was a critical part of both phases of the project. The agency therefore reasonably could conclude that

¹(...continued)

entire record, see Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10, recon. denied, B-265865.5, B-265865.6, June 3, 1996, 96-1 CPD ¶ 261, we will consider all this information in reviewing the reasonableness of the agency's decision. While we give greater weight to contemporaneous evidence, DynCorp, 71 Comp. Gen. 129, 134 n.12 (1991), 91-2 CPD ¶ 575 at 7 n.13, here we view the agency's post-protest documentation as simply filling in previously unrecorded details, rather creating a new, post hoc rationale.

Pickering's superiority in museum/exhibit design did not constitute a significant advantage for purpose of this project.²

As noted above, under the second evaluation criterion (specialized experience and technical competence), the SSB found no significant difference between Johnson and Pickering. Johnson demonstrated superior knowledge of local and regional codes and regulations, but the evaluators preferred Pickering's management structure, with its majority of disciplines in-house, overall. The supplemental documentation indicates that the SSB also preferred Johnson's approach of using its principal as lead architect and point of contact, while finding Pickering's proposal for a point of contact/project manager apart from the lead architect, with an additional position of "project director," somewhat confusing.

Pickering asserts that consideration of the firms' knowledge of local and regional codes and regulations represents an improper bias toward local firms. This objection is untimely, since the CBD announcement stated that the agency would consider such knowledge in its evaluation. See 4 C.F.R. § 21.2(a)(1) (1997) (protest alleging a solicitation impropriety must be filed prior to the time set for receipt of initial proposals); B & K Enters., B-276066, May 7, 1997, 97-1 CPD ¶ 166 at 3 (objection to the announced evaluation factors must be raised prior to the submission of proposals). In any event, as the agency points out, unlike considerations of geographical proximity, consideration of such knowledge does not of itself favor local firms, since the relevant codes and regulations are a matter of public record and available to firms outside the Nashville area.

With respect to the agency's concern regarding its proposal for a point of contact/project manager apart from the lead architect, with an additional position of project director, Pickering contends that its organizational structure was clearly defined in section 7 of its SF 255, as well as in section 10 and in an organizational chart provided with the SF 255. We have reviewed this material and find nothing in section 7 or Pickering's organizational chart to clarify the roles of its team members. Section 7 provides job titles and work history, but does not address Pickering's plans for the instant project; nor does the organizational chart provide more than the theoretical lines of authority for the protester's management structure. Further, the record supports the agency's perception that the role of the "project director" is somewhat confusing, since section 10, while it provides some relevant information, explains none of the duties and authority of the position, listed at the end of the SF 255, after a long section describing the duties of the other team members. In any event, there is little evidence that the conflict in roles was a

² To the extent that Pickering argues, generally, that its experience and qualifications were as great as Johnson's for the other disciplines, the protester provides nothing more than its mere disagreement with the evaluation results, and thus provides no basis for sustaining the protest. CH2M Hill, Ltd., supra.

significant factor in the evaluation, given the SSB's overall favorable rating of Pickering's management structure.

Other concerns mentioned at the debriefing, and challenged by Pickering here, had no significant role in the evaluation and selection. These concerns involve the experience of the protester's project director in construction and the management experience of its point of contact/project manager, not mentioned in the evaluation documents. The SSB recorder, who conducted the debriefing, denies that, by noting the project director's extensive construction experience, he intended to imply that the project director had no design experience. Similarly, he states that he did not intend to indicate any concern over the management ability of the project manager/point of contact by stating that the project manager's extensive experience in managing DOD contracts was less significant for the instant, civil works effort, than it would have been for other projects. In essence, the recorder explains, he was not questioning the individuals' qualifications as much as suggesting that the protester might have matched those skills better with other projects. Neither the debriefing nor any evidence in the record suggests that the agency failed to conduct an adequate examination of the information submitted by Pickering in connection with the project.

The agency also denies that it gave more weight to past performance of contracts for the Nashville District, as Pickering contends it was told at the debriefing. The SSB did note that Pickering had the "most dated" experience with the District of any of the three finalists. The agency has presented its records, indicating that, despite Pickering's excellent performance on older contracts, its recent ratings have generally been average, with one "conditional" recommendation based on problems with the protester's cost estimating consultant. In this regard, the agency notes that the CBD specifically noted cost control as a consideration in the past performance evaluation. Pickering's receipt of a more recent, favorable rating in an Air Force family housing contract would have made no difference, the agency contends, in its determination that there was no significant advantage to Pickering's record of past performance. Although Johnson had no ratings as a prime contractor, the agency states that it had performed well as a subconsultant on prior work at Murfree Springs. On this record we are unable to find unreasonable the agency's conclusion that there was no meaningful difference between the two firms under the past performance factor.

In sum, Pickering overall presents nothing from which our Office could find the agency's judgment, that the two firms were technically equal under the four major selection factors, was either unreasonable or inconsistent with the CBD announcement. This being so, the agency's consideration of the less important criteria--geographical proximity and contract volume, for which Johnson had a decided advantage--was reasonable and consistent with the announcement.

As an additional ground of protest, Pickering objects to the conduct of the interviews because they were not attended by all SSB members. As a preliminary matter, the agency notes that its regulation 715-1-16, to which the protester refers, requires that only one SSB member be present at interviews in "routine" procurements, such as the instant case. Further, given our conclusion that the evaluation was reasonable and is supported by the record, and the lack of any evidence that the SSB members' absence resulted in unfair treatment, we see no basis to object to the agency's selection decision on this ground.

The protest is denied.

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